

## Message Text

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ORIGIN EB-11

INFO OCT-01 EUR-25 IO-14 ISO-00 L-03 COME-00 SS-20 CIAE-00

DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-07 PA-04 RSC-01

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R 072204Z MAY 74

FM SECSTATE WASHDC

TO USMISSION GENEVA

INFO AMEMBASSY MOSCOW

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E.O.11652: N/A

TAGS: PFOR

SUBJECT: CSCE: COMMERCIAL EXCHANGES SUBCOMMITTEE:  
ARBITRATION

REF: GENEVA 1954

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GENEVA FOR US CSCE DEL

1. DEPARTMENT AGREES WITH COURSE OF ACTION PROPOSED BY DELEGATION IN PARA 4 REFTEL OF REMINDING SOVIETS THAT THEY WERE COMMITTED BY HELSINKI RECOMMENDATIONS TO EXAMINE PRACTICAL MEASURES TO IMPROVE SETTLEMENT OF COMMERCIAL DISPUTES. MAIN ISSUE UNDER THIS HEADING WHICH US RAISED IN HELSINKI AND DURING FALL SESSION AT GENEVA WAS THAT OF ENCOURAGING THIRD COUNTRY ARBITRATION UNDER MUTUALLY ACCEPTABLE RULES. WE WERE UNDER IMPRESSION THAT OTHER DELEGATIONS AGREED THIS WAS PROPER TOPIC FOR CONFERENCE TO FOCUS ON.

2. REVIEW HERE OF SEVERAL SOVIET TRADE AGREEMENTS WITH OTHER CONFERENCE MEMBERS (UK, SWEDEN, AUSTRIA, IRELAND) DID NOT TURN UP ARBITRATION CLAUSE OF KIND MEDVEDEV REFERRED TO. NO DOUBT SUCH PROVISIONS CAN BE FOUND IN OTHER SOVIET TRADE AGREEMENTS (E.G. WITH EAST EUROPEANS) BUT WE DO NOT SEE THIS AS FUNDAMENTAL PROBLEM. FOR

EXAMPLE, DRAFT RESOLUTION MIGHT BE AMENDED TO WAIVE ITS EFFECT IN CASES WHERE OTHER UNDERSTANDINGS ALREADY EXIST.

3. DELEGATION MIGHT SUGGEST TO MEDVEDEV PENULTIMATE SENTENCE OF CSCE/II/D/12 COULD BE AMENDED AS FOLLOWS:  
"...SHOULD DESIGNATE A PLACE OF ARBITRATION IN A COUNTRY WHICH IS PARTY TO THE 1958 CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, WHICH WOULD BE A THIRD COUNTRY UNLESS THE PARTICIPATING STATES CONCERNED HAVE, IN A SEPARATE UNDERSTANDING, ADOPTED DIFFERENT PROCEDURES."

4. DELEGATION COULD ADVISE HUNGARIANS WE WOULD ACCEPT AMENDMENT TO MENTION RULES OF BOTH ICC AND ECE, WHICH IS FORMULA OF US-POLISH AGREEMENT OF NOVEMBER 8, 1972.  
(FYI: AS FINAL FALLBACK, WE COULD ACCEPT REFERENCE TO ECE RULES ALONE.)

5. EVEN IF THESE COMPROMISES ARE NOT IMMEDIATELY ACCEPTED BY EAST, BELIEVE US-SPONSORED RESOLUTION SHOULD LIMITED OFFICIAL USE

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BE PRESENTED IN SUBCOMMITTEE WITHOUT UNDUE DELAY IN ORDER TO ASCERTAIN LIKELIHOOD OF SECURING SIGNIFICANT RESULTS UNDER THIS AGENDA TOPIC.

6. FOLLOWING POINTS MIGHT BE STRESSED IN SUBCOMMITTEE DISCUSSION:

A. WE INTEND NO IMPLICATION OF UNFAIRNESS IN AWARDS BY EASTERN COUNTRIES' FOREIGN TRADE ARBITRATION COMMISSIONS, BUT WE ARE CONCERNED ABOUT APPEARANCE OF FAIRNESS WHICH

IS IMPORTANT TO COMMERCIAL CONFIDENCE.

B. ARBITRATION BEFORE A PANEL CONSTITUTED BY AN AGENCY LINKED TO ONE OF THE PARTIES TO A DISPUTE (THE FTO) IS NOT IN ACCORD WITH OUR CONCEPTS OF PROCEDURAL JUSTICE.

C. ESPECIALLY WHERE FTO'S ARE DEALING WITH SMALLER WESTERN FIRMS, THE FTO HAS UNEQUAL NEGOTIATING POWER TO INSIST ON ARBITRATION BY A DOMESTIC ARBITRATION BODY.

D. PURPOSE OF RESOLUTION WOULD BE TO OBLIGATE PARTICIPANT GOVERNMENTS TO ENCOURAGE THIRD PARTY ARBITRATION UNDER INTERNATIONALLY ACCEPTED RULES. RESOLUTION FORESEES HOWEVER THAT PARTIES TO A CONTRACT MIGHT MUTUALLY AGREE OTHERWISE. RESOLUTION WOULD NOT, MOREOVER, SUPERSEDE OTHER UNDERSTANDINGS PARTICIPATING COUNTRIES MAY HAVE REACHED ALTHOUGH IT MIGHT GIVE IMPETUS TO REEXAMINING THESE UNDERSTANDINGS WHEN THEY EXPIRE.

E. US PROPOSAL MENTIONS ICC RULES. WE HAVE SOME PREFERENCE FOR THESE BECAUSE THEY HAVE BEEN IN EXISTENCE AND WORLDWIDE USE FOR SOME TIME AND US BUSINESSMEN ARE FAMILIAR WITH THEM. HOWEVER, WE ARE NOT INFLEXIBLE ON THIS POINT AND WOULD BE GLAD TO HEAR VIEWS OF OTHERS.

F. THESE POINTS MADE BY US DELEGATION DURING DISCUSSION PHASE IN FALL OF 1973 AND WE BELIEVE THEY RECEIVED SUBSTANTIAL SUPPORT IN SUBCOMMITTEE. RUSH

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## Message Attributes

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